

## CONTRACTOR AGREEMENT

THIS CONTRACTOR AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of January 2021, by and between the CITY OF ALAMEDA, a municipal corporation (the "City"), and LANDSCAPE STRUCTURES INC., a (Minnesota corporation) whose address is 601 7<sup>th</sup> Street S., Delano, MN 55328, ("Contractor"), in reference to the following:

### **RECITALS:**

- A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The City is in need of the following services: purchase and installation of the Bayport Park Playground and Safety Surfacing.
- C. Sourcewell is a purchasing agency whose cooperative purchase contracts have been competitively solicited so that government agencies may utilize its contracts in order to meet all local, state and federal competitive purchasing requirements as well as prevailing wage rates and Sourcewell has the authority to offer products and services at prices that have been assessed to be fair, reasonable and competitive.
- D. Playground equipment and related safety surfaces are considered equipment purchases eligible for procurement and installation using Sourcewell.
- E. The Alameda Recreation and Park Department reached out to three playground companies, including Contractor, which companies were pre-approved with pre-negotiated pricing through Sourcewell, to come up with a design of playground equipment and safety surfacing using an outer space theme and within a budget of \$259,974.31.
- F. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- G. City and Contractor desire to enter into an agreement for demolition and removal of existing playground structures on property, installation of new playground equipment, and installation of safety surfacing and fencing at Bayport Park, upon the terms and conditions herein.

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1. TERM:**

Contractor shall have 120 consecutive working days from the date the work is to commence pursuant to the Notice to Proceed to diligently prosecute the work to completion.

**2. SERVICES TO BE PERFORMED:**

Contractor agrees, at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all work strictly in accordance with the Specifications, Special Provisions and Plans, which Specifications, Special Provisions and Plans are hereby referred to and expressly made a part hereof with the same force and effect as if the same were fully incorporated herein. Contractor acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Contractor to perform all tasks included therein.

**3. COMPENSATION TO CONTRACTOR:**

Contractor shall be compensated for services performed pursuant to this Agreement in the amount and manner set forth in Contractor's bid, which is attached hereto as Exhibit A and incorporated herein by this reference. Payment will be made in the same manner that claims of a like character are paid by the City, with checks drawn on the treasury of the City.

Payment will be made by the City in the following manner: When Contractor receives its Notice of Completion for the project, Contractor shall submit an invoice for the total amount of charges as shown in Exhibit A. Pricing and accounting of charges are to be according to the quote pricing in Exhibit A, unless mutually agreed to in writing.

Payment shall not be construed as acceptance of defective work.

Total compensation for work is \$259,974.31, with a 10% percent contingency in the amount of \$25,987.43 for a total not to exceed of \$285,861.74. Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City.

**Prompt Payment of Withheld Funds To Subcontractors:** The City shall hold retainage from the prime contractor and shall, as determined by the City, make prompt and regular incremental acceptances of portions of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted by the City, including incremental acceptances of portions of the contract work. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving (a) late payment or nonpayment by the prime contractor, (b) deficient subcontractor performance, or (c) noncompliance by a subcontractor with the contract, including but not limited to remedies under California Public Contract Code Section 9204. This clause applies to both DBE and non-DBE subcontractors.

**4. TIME IS OF THE ESSENCE:**

Contractor and the City agree that time is of the essence regarding the performance of this Agreement.

It is agreed by the parties to this Agreement that if all the work called for under the Agreement is not completed before or upon the expiration of the time limit set forth in Paragraph 1 above, damage will be sustained by the City, and it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay. It is therefore agreed that Contractor will pay the City the sum of one hundred DOLLARS (\$100) per day as liquidated damages for each and every day's delay beyond the time prescribed to complete the work; and Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the City may deduct the amount thereof from any money due or that may become due Contractor under the Agreement.

It is further agreed that in case the work called for under the Agreement is not finished and completed in all parts and requirements within the time specified, the City shall have the right to extend the time for completion or not, as may seem best to serve the interest of the City; and if the City decides to extend the time limit for the completion of the Agreement, it shall further have the right to charge Contractor, his or her heirs, assigns or sureties, and to deduct from the final payment for the work, all or any part, as it may deem proper, of the actual costs and overhead expenses which are directly chargeable to the Agreement, and which accrue during the period of such extensions.

Contractor shall not be assessed with liquidated damages during any delay in the completion of the work caused by an act of God or of the public enemy, acts of the City, fire, flood, epidemic, quarantine restriction, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided that Contractor shall, within one (1) day from the beginning of such delay, notify the City in writing of the nature of delay. The City shall ascertain the facts in good faith and the extent of the delay, and its findings of the facts thereon shall be final and conclusive.

#### **5. STANDARD OF CARE:**

Contractor agrees to perform all services and work hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services and work shall be performed by qualified and experienced personnel who are not employed by the City nor have any contractual relationship with the City.

#### **6. INDEPENDENT PARTIES:**

Contractor hereby declares that it is engaged as an independent business and it agrees to perform its services as an independent contractor. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Contractor's services and work. None of the benefits provided by the City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from the City to Contractor, its employees, subcontractors, suppliers or agents. Deductions shall not be made for any state or federal taxes, FICA payments, FERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Contractor. Payments of the above items, if required, are the responsibility of Contractor.

**7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Contractor assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Contractor shall indemnify, defend (with counsel acceptable to the City) and hold the City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Contractor.

**8. NON-DISCRIMINATION:**

Consistent with the City's policy and state and federal law that harassment and discrimination are unacceptable employer/employee conduct, Contractor agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Contractor or Contractor's employee, agents, subcontractors or suppliers on the basis of any kind of any statutorily (federal, state or local) protected class, including but not limited to: race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (ex. Cancer), genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, political affiliation, military and veteran status or legitimate Union activities. Contractor agrees that any violations of this provision shall constitute a material breach of this Agreement.

**9. HOLD HARMLESS:**

Contractor shall indemnify, defend (with counsel acceptable to the City) and hold harmless the City, its City Council, boards, commissions, officials, employees, agents and volunteers ("Indemnitees") from and against any and all loss, damages, liability, obligations, claims, suits, judgments, costs and expenses whatsoever, including reasonable attorneys' fees and costs of litigation ("Claims"), only to the extent arising from or in any manner connected to Contractor's performance of its obligations under this agreement or out of the operations conducted by Contractor, except for such loss or damage arising from the active negligence or misconduct of the City. If Claims are filed against Indemnitees which allege negligence, recklessness or willful misconduct on behalf of the Contractor, Contractor shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Contractor.

Contractor's obligation to indemnify, defend and hold harmless Indemnitees shall expressly survive the expiration or early termination of this Agreement.

**10. INSURANCE:**

On or before the commencement of the terms of this Agreement, Contractor shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C and D. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days advance written notice to the City of Alameda, Attention: Risk Manager."

Contractor shall maintain in force ~~at all~~ times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company licensed to offer insurance business in the State of California with a current A.M. Best's rating of no less than A:VII or Standard & Poor's Rating (if rated) of at least BBB unless otherwise acceptable to the City. Endorsements naming the City, ~~its~~ City Council, boards, commissions, officials, employees, agents and volunteers as additional insured shall be submitted with the insurance certificates.

A. COVERAGE:

Contractor shall maintain insurance coverage and limits at least as broad as:

- (1) Workers' Compensation:  
Statutory coverage as required by the State of California.
- (2) Liability:  
Commercial general liability coverage in the following minimum limits:

Bodily Injury:           \$1,000,000 each occurrence  
                                  \$2,000,000 aggregate - all other

Property Damage:    \$1,000,000 each occurrence  
                                  \$2,000,000 aggregate

If submitted, combined single limit policy with per occurrence limits in the amounts of \$2,000,000 and aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above. Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required.

- (3) Automotive:  
Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury:           \$1,000,000 each occurrence  
Property Damage:       \$1,000,000 each occurrence

or

Combined Single Limit:   \$2,000,000 each occurrence

Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required.

- (4) Pollution Prevention:  
Legal liability required for hazardous materials excavation in the amount of \$2,000,000 each ~~occurrence~~. Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required.

- (5) Builders Risk:

Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

The coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of the coverage carried by or available to the Contractor; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City.

**H. SUBROGATION WAIVER:**

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

**C. FAILURE TO SECURE:**

If Contractor at any time during the term hereof should fail to secure or maintain the foregoing insurance, the City shall be permitted to obtain such insurance in Contractor's name or as an agent of Contractor and shall be compensated by Contractor for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

**D. ADDITIONAL INSURED:**

City, its City Council, boards, commissions, officials, employees and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature under this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy. The additional insured coverage under the Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance.

**E. SUFFICIENCY OF INSURANCE:**

Contractor shall furnish the following bonds from a bonding company acceptable to the City's Risk Manager. Faithful Performance Bond and Labor and Material Bond are only required for work over \$25,000. Therefore, those estimates that are under \$25,000 will not need to budget for the bond premiums and those estimates over \$25,000 will need to be sure to budget for the bond premiums.



The insurance limits required by the City are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor.

**11. BONDS:**

Contractor shall furnish the following bonds from a bonding company acceptable to the City's Risk Manager:

A. Faithful Performance: A bond in the amount of 100% of the total contract price guaranteeing the faithful performance of this contract, and

B. Labor and Materials: A bond for labor and materials in the amount of 100% of the total contract price.

**12. PROHIBITION AGAINST TRANSFERS:**

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, Contractor's claims for money from the City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to the City by Contractor.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Contractor is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Contractor, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

**13. SUBCONTRACTOR APPROVAL:**

Unless prior written consent from the City is obtained, only those people and subcontractors whose names are listed in Contractor's bid shall be used in the performance of this Agreement.

Requests for additional subcontracting shall be submitted in writing, describing the scope of work to be subcontracted and the name of the proposed subcontractor. Such request shall set forth the total price or hourly rates used in preparing estimated costs for the subcontractor's services. Approval of the subcontractor may, at the option of the City, be issued in the form of a Work Order.

In the event that Contractor employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general and automobile liability insurance in reasonable conformity to the insurance carried by Contractor. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

**14. PERMITS AND LICENSES:**

Contractor, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License that may be required in connection with the performance of services and work hereunder.

**15. REPORTS:**

Each and every report, draft, work product, map, record and other document reproduced, prepared or caused to be prepared by Contractor pursuant to or in connection with this Agreement shall be the exclusive property of the City.

No report, information nor other data given to or prepared or assembled by Contractor pursuant to this Agreement shall be made available to any individual or organization by Contractor without prior approval by the City.

Contractor shall, at such time and in such form as the City may require, furnish reports concerning the status of services and work required under this Agreement.

**16. RECORDS:**

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by the City that relate to the performance of services and work under this Agreement.

Contractor shall maintain adequate records of services and work provided in sufficient detail to permit an evaluation of services and work. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to such books and records to the representatives of the City or its designees at all proper times, and gives the City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by the City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Contractor shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

**17. NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Contractor to the City shall be addressed to the City at:



City of Alameda  
Recreation and Parks Department  
Alameda, CA 94501  
ATTENTION: Director  
Ph: (510) 74707529 / Fax: (510) 523-4071  
Email: ARPD@alamedaca.gov

All notices, demands, requests, or approvals from the City to Contractor shall be addressed to Contractor at:

Landscape Structures Inc.  
601 7<sup>th</sup> Street S.  
Delano, MN 55328  
Ph: (763) 972-5243  
Email: claincharkess@playlsi.com

**18. SAFETY:**

Contractor will be solely and completely responsible for conditions of all vehicles owned or operated by Contractor, including the safety of all persons and property during performance of the services and work under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Contractor will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

Contractor will immediately notify the City's Risk Manager within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. Contractor will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Contractor's employee(s) involved in the incident; (iii) name and address of Contractor's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

**19. LAWS TO BE OBSERVED:**

Contractor shall comply with all applicable laws, state, federal, and all ordinances, rules and regulations enacted or issued by City. In addition, Contractor shall keep himself fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

**20. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE AND PREVAILING WAGE REQUIREMENTS ON PUBLIC WORKS PROJECTS:**

Effective January 1, 2015, no Contractor or Subcontractor may be listed on a bid proposal for a public works project (submitted after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 (with the limited exceptions from this requirement for bid purposed only under Labor Code Section 1771.1(a)). Register at <https://efiling.dir.ca.gov/PWCR>.

No Contractor or Subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Prime Contractor is required to post job site notices prescribed by regulations. See 8 Calif. Code Regulation §16451(d).

Effective April 1, 2015, All Contractors and Subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner at: <https://apps.dir.ca.gov/ecpr/das/altlogin>

**21. HOURS OF LABOR:**

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Contractor or by any subcontractor on any subcontract under this Agreement, upon the work or upon any part of the work contemplated by this Agreement, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work, provided that the employees' compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor shall pay the City a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by Contractor, or by any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of *per diem* wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Contract applicable to each particular craft, classification, or type of worker employed.

**22. APPRENTICES:**

Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by Contractor or any subcontractor under it on contracts greater than \$30,000 or ■ working days. Contractor and any subcontractor under it shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Section 1777.5 of the Labor Code requires Contractor or subcontractor employing workers in any apprenticeable occupation to apply ■ the joint apprenticeship committee nearest the site of the public works project, and which administers the apprenticeship program in that trade, for a certificate of approval, if they have not previously applied and ■ covered by the local apprenticeship standards.

Contractor is required to make contributions to funds established for the administration of apprenticeship programs if: (1) Contractor employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site ■ making such contributions; or (2) if Contractor is not ■ signatory to an apprenticeship fund and if the funds administrator is unable to accept Contractor' required contribution. Contractor or subcontractor shall pay ■ like amount to the California Apprenticeship Council.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

**23. LABOR DISCRIMINATION:**

No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, religion, age, national origin, sexual orientation or physical disability of such persons and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of the provisions of the Labor Code, and, in particular, Section 1735.

**24. REGISTRATION OF CONTRACTORS:**

Before submitting bids, contractors shall be licensed in accordance with the provisions of Chapter 9, Division 3, of the Business and Professional Code of the State of California.

**25. URBAN RUNOFF MANAGEMENT:**

Contractor shall avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, contractor shall use as little as necessary. Contractor shall take all steps necessary to keep wash water out of the streets, gutters and storm drains.

Contractor shall develop and implement erosion and sediment control to prevent pollution of storm drains. Such control includes but is not limited to:

- a. Use storm drain inlet protection devices such as sand bag barriers, filter fabric fences, block and gravel filters. (Block ■■■■ drain inlets prior to the start of the rainy season (October 15), on site de-watering activities and saw-cutting activities; shovel or vacuum saw-cut slurry and ■■■■ from the site).
- b. Cover exposed piles of soil ■■ construction material with plastic sheeting. All construction materials must be stored in containers.
- c. Sweep and ■■■■ all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain ■■ well ■■ the end of the each work day. At the completion of the project, the street ■■■■ be washed and the wash water shall be collected and disposed of offsite in ■■ appropriate location.
- d. After breaking old pavement, Contractor shall remove all debris to avoid contact with rainfall or runoff.
- e. Contractor shall maintain a clean work area by removing trash, litter, and debris at the end of each workday. Contractor shall also clean up any leaks, drips, and other spills as they occur.

The objective is to ensure that the City and County of Alameda County-Wide Clean Water Program is adequately enforced. These controls should be implemented prior to the start of construction, up-graded as required, maintained during construction phases to provide adequate protection, and removed at the end of construction.

These recommendations ■■ intended to be used in conjunction with the State's Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, Section 7.1.01 of the Standard Specifications and any other appropriate documents on storm water quality controls for construction.

Failure to comply with this program will result in the issuance of noncompliance notices, citations, project stop orders or fines. The fine for noncompliance of the above program is two hundred and fifty dollars (\$250.00) per occurrence per day. The State under the Federal Clean Water Act ■■ also impose a fine on the contractor, pursuant to Cal. Water Code §13385.

## **26. COMPLIANCE WITH MARSH CRUST ORDINANCE:**

Contractor shall perform all excavation work in compliance with the City's Marsh Crust Ordinance as set forth at Section 13-56 of the Municipal Code. Prior to performing any excavation work, Contractor shall verify with the Building Official whether the excavation work is subject to the Marsh Crust Ordinance. Contractor shall apply for and obtain permits from Building Services on projects deemed to be subject to the ■■■■ Crust Ordinance.

## **27. COMPLIANCE WITH THE CITY'S INTEGRATED PEST MANAGEMENT POLICY:**

Contractor shall follow the requirements of the City's Integrated Pest Management (IPM) Policy to ensure the City is in compliance with ■■ Municipal Regional Stormwater NPDES

Permit, Order No. R2-2009-0074, issued by the San Francisco Bay Regional Water Quality Control Board.

- ☐ Contractor shall use the most current [redacted] technologies available to [redacted] the long-term prevention or suppression of pest problems and [redacted] minimize negative impacts on the environment, non-target organisms, and human health for the control or management of pests in and around City buildings and facilities, parks and golf courses, urban landscape areas, rights-of-way, and other City properties.
- ☐ Contractor will consider the City [redacted] Policy's hierarchy of options or alternatives listed below, in the following order before recommending the [redacted] of or applying any pesticide on City property: (1)
  - a. No controls (e.g. tolerating the pest infestation, use of resistant plant varieties or allowing normal life cycle of weeds);
  - b. Physical or mechanical controls (e.g. hand labor, mowing, exclusion);
  - c. Cultural controls (e.g. mulching, disking, alternative vegetation) and good housekeeping (e.g. cleaning desk area);
  - d. Biological controls (e.g., natural enemies or predators);
  - e. Reduced-risk chemical controls (e.g., soaps or oils); and
  - f. Other chemical controls.
- ☐ Prior to applying chemical controls Contractor shall complete a checklist for the City's pre-approval that explains why a chemical control is necessary. For annual contracts that require regular application of chemical controls the contractor shall submit one checklist prior to the initiation of the project demonstrating that the hierarchy has been reviewed and no other options exist. (See [redacted] C). Additionally, Contractor shall provide documentation to the City's project manager of the implementation of the IPM techniques hierarchy described in the City's [redacted] Policy.
- ☐ Contractor shall avoid the use of the following pesticides that threaten water quality, human health and the environment:
  - a. Acute Toxicity Category 1 chemicals [redacted] identified by the Environmental Protection Agency (EPA);
  - b. Organophosphate pesticides (e.g., those containing Diazinon, chlorpyrifos or malathion);
  - c. Pyrethroids (bifenthrin, cyfluthrin, beta-cyfluthrin, cypermethrin, deltamethrin, esfenvalerate, lambda-cyhalothrin, permethrin, and tralomethrin), carbamates (e.g., carbaryl), and sipronil; and
  - d. Copper-based pesticides unless their use is judicious, other approaches and techniques have been considered, and the threat of impact to water quality is prevented.

- ☐ Contractor shall sign the Contractor Verification Form (attached ■ Exhibit B) indicating the intent to implement the City's ■ Policy, and return ■ signed copy to the City's project manager.
- Contractor shall provide to the City's project manager an annual report of all pesticide usage in support of City operations including pesticide name, active ingredient(s), target pest(s), the total amounts used and the reasons for any increase in use of any pesticide.
- ☐ Contractor shall provide a copy of any ■ certifications(s) to the City's project manager prior to initiation of the service work.

A copy of the City's IPM Policy may be obtained from the City's project manager and is also on file with the City Clerk.

*If this Agreement pertains to the use of any items listed above, Contractor will need to fill out and send ■ the Contractor Verification Form and Contractor Check List. ADD EXHIBIT B IF PEST CONTROL.*

## **28. PURCHASES OF MINED MATERIALS REQUIREMENT:**

Contractor shall ensure that ■ purchases of mined materials such as construction aggregate, sand and gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation identified on the AB3098 List per the Surface Mining and Reclamation Act of 1975 (SMARA).

Within five days of award of contract, Contractor shall submit a report ■ the City which lists the intended suppliers for the above materials and demonstrates that the suppliers ■ in compliance with the SMARA requirements. The AB3098 List is maintained by the Department of Conservation's Office of Mine Reclamation (OMR) and can be viewed at: [www.conservation.ca.gov/OMR/ab\\_3098\\_list/index.htm](http://www.conservation.ca.gov/OMR/ab_3098_list/index.htm). Note that the list changes periodically and should be reviewed accordingly.

## **29. TERMINATION:**

In the event Contractor fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If such default is not cured within ■ period of two (2) business days after receipt by Contractor from the City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the City may terminate the Agreement forthwith by giving to Contractor written notice thereof.

The City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving ■ (7) days' prior written notice ■ Contractor ■ provided herein. Upon termination of this Agreement, each party ■ to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.



**30. ATTORNEYS' FEES:**

In the event of the bringing of any action ■ suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to ■■■■■ from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For ■■ purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney's office shall be based ■ the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys ■ employed by the Alameda City Attorney's Office.

**31. PCC SECTION 9204 SUMMARY - CLAIMS SUBMITTED BETWEEN 01-01-2017 AND 01-01-2027.:**

Notwithstanding anything else to the contrary stated in the Information For Bidders (IFB) or the Contract Documents, all claims, regardless of dollar amount, submitted between January 1, 2017 and January 1, 2027 shall be governed by PCC Section 9204 and this section.

The following provisions and procedures shall apply:

A. For the purposes of this section, the ■■■ "Claim", "Contractor", "mediation", "Public Entity" "Public works project" and "Subcontractor" shall have the meaning provided for in PCC Section 9204.

B. Contractor shall submit each Claim (whether for a time extension, payment for money or damages) in writing and in compliance with PCC Section 9204. Contractor must include reasonable documentation to support each claim.

C. Upon receipt of a Claim, the City shall conduct ■ reasonable review and respond in writing within 45 days of receipt and shall identify in a written statement what portions of the claim are disputed and undisputed. Undisputed portions of the Claim shall be process and paid within 60 days of the written statement. Undisputed amounts not paid in a timely manner shall bear interest at 7% per annum. The City and Contractor may mutually agree to extend the 45 day response time.

D. If the City needs approval from the City Council to provide a written statement, the 45 days may be extended to 3 days following the next duly noticed public meeting pursuant to PCC Section 9204(d)(1)(C).

E. If the City fails to timely respond to a Claim ■ if Contractor disputes the City's response, Contractor may submit a written demand for ■ informal meet and confer conference with the City to settle the issues in dispute. The demand ■■■ be sent via registered or certified mail, return receipt requested. Upon receipt, the City shall schedule the conference within 30 days.

F. Within 10 business days following the informal meet and confer conference, the City shall submit to Contractor a written [REDACTED] describing any issues remaining in dispute and that portion which is undisputed. Undisputed portions of the Claim shall be processed and paid within 60 days of the written statement. Undisputed [REDACTED] not paid in a timely [REDACTED] shall bear interest at 7% per annum. The issues remaining in dispute shall be submitted to non-binding mediation. If the City and Contractor mutually agree on a mediator, each party shall pay equal portions of all associated costs. If within 10 business days, the City and Contractor cannot agree on a mediator, each party shall select a mediator (paying all costs associated with their selected mediator), and those mediators shall select a qualified neutral third party to mediate the disputed issues. The City and Contractor shall pay equal portions of all associated costs of such third party mediator.

G. Unless otherwise agreed by the City and Contractor, any mediation conducted hereunder shall [REDACTED] any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has commenced.

H. The City reserves all rights and remedies that it has pursuant to the Construction Contract, plans and specification, at law or in equity which are not in conflict with PCC 9204.

This Section shall be automatically extended if legislation is lawfully passed which extends the terms of Public Contract Code Section 9204 beyond January 1, 2027.

**32. CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the [REDACTED] of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the [REDACTED] of the County of Alameda, State of California.

**33. ADVERTISEMENT:**

Contractor shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from the City to do otherwise.

**34. WAIVER:**

A waiver by City of any breach of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of any subsequent breach of the [REDACTED] or any other term, covenant, or condition contained herein, whether of the same or a different character.

**35. INTEGRATED CONTRACT:**

This Agreement represents the [REDACTED] and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be

held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both the City and Contractor.

**36. INSERTED PROVISIONS:**

Each provision and clause required by law ■ be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement ■ be read and enforced as though each were included herein. If through mistake ■ otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended ■ make such insertion on application by either party.

**37. CAPTIONS:**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms ■ provisions of this Agreement.

**38. COUNTERPARTS:**

This Agreement may be executed in any number of counterparts (including by fax, PDF, DocuSign, or other electronic means), each of which shall be deemed ■ original, but all of which shall constitute one and the same instrument.

**39. SIGNATORY:**

By signing this Agreement, each signatory ■ and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature ■ this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

**40. CONTROLLING AGREEMENT:**

In the event of a conflict between the ■ and conditions of this Agreement (as amended, supplemented, restated ■ otherwise modified from time to time) and any other terms and conditions wherever contained, including, without limitation, terms and conditions included within exhibits, the terms and conditions of this Agreement shall control and be primary.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

LANDSCAPE STRUCTURES INC.  
■ Minnesota corporation

CITY OF ALAMEDA,  
a municipal corporation

Pat Faust - President

Name: Pat Faust  
Title: President

Eric J. Levitt  
City Manager

RECOMMENDED FOR APPROVAL

Fred Caslavka

Name: Fred Caslavka  
Title: CFO

Amy Woolbridge

Amy Woolbridge  
Recreation and Parks Director

Contractor License No. 840892

APPROVED AS TO FORM:  
City Attorney

DIR No. 1000007542

Michael Roush  
Assistant City Attorney

ALL PURCHASE ORDERS, CONTRACTS, AND  
CHECKS TO ■■■ MADE OUT TO:LANDSCAPE STRUCTURES, INC.  
681 7TH STREET SOUTH  
DELANO, ■■■ U.S.A.

Fax: 763-972-3185

030117-L21

## Prepared For:

Contact Name	Amy Woolbridge	Phone	(510) 747-7570
Bill To Name	City of Alameda	Ship To Name	Bayport Park
Bill To	1327 Oak Street Alameda, California 94501 United States	Ship To	301 Jack London Avenue Alameda, California United States
Quote Number	00029368	Quote Date	11/24/2020
Opportunity Name	Bayport Park RFP	Quote Exp Date	3/15/2021
Quote Name	Bayport Park RFP - Sourcewell	Est Lead Time	8-12 weeks

	Product Description	Sale Price	Total Price
1.00	Rental Temporary Fence rental for installation of surfacing or equipment	\$1,781.64	\$1,781.64
1.00	Demolition Demolition and removal of existing play structure, swings and benches.	\$8,381.34	\$8,381.34
1.00	Work Removal of existing wood fiber approximately 3325 sq. ft.	\$16,381.20	\$16,381.20
1.00	Site Work Installation of approximately 3325 sq. ft. of 8" of base rock for new rubber safety surfacing.	\$30,320.83	\$30,320.83
1.00	Site Work New 4' high fence w/ gate to fully enclose play area. Fence to be 4' high, black vinyl coated to match in similar style to existing fencing. Gate to be a single walk swing gate with fork latch. New posts to be surface mount to concrete (if available) or core drilled footings based on installers preference at installation. Approximately 60'-65' linear feet total.	\$3,741.67	\$3,741.67
	Landscape Structures PlayBooster Design #1136541-02-04M including:		
1.00	PlayBooster, 5-12 Custom Rookship Sway Fun w/ 12' Riser; Single Post Swing with 1 Belt Seat, 1 Molded Bucket w/ Harness and 1 Full Bucket Seat; and Playstructure with Corkscrew, Crest Climber, Deck Link, Loop Arch, Sunbeam Climber, Laser-Cut Star Post Toppers, Curved Transfer Module, Ball Maze Panel, Gear Panel, Handhold Panel, Space Travel Panel, Table Panel, 2" Circular Horizontal Ladder, Double Swoosh Slide, SlideWinder2, and complimentary Welcome Sign.	\$87,485.00	\$87,485.00
	Installation of Landscape Structures PlayBooster Design #1136541-02-04M by a manufacturer certified installer.		
1.00	Installation *Project D/R if needed for State Prevailing Wage projects. *Installation price quoted for favorable working conditions. If rock, poor soil conditions, a high water table and/or other unforeseen site conditions exist requiring additional materials and labor, additional charges may be incurred.  Surface America Poured-In-Place Rubber surfacing materials. -Square Footage: 3325 sf	\$29,441.28	\$29,441.28

# Landscape Structures Representative

Alex Halley

alexh@grossinc.com

1.00	Surface America Rubber	<p>-Thickness: 3-1/2" (per 8' CFH of play equipment)</p> <p>-Binder: Aliphatic UV Stable</p> <p>-Color: 50% Color &amp; 50% Black speckled mix (colors TBD)</p> <p>***Rubber follows the contour of the subbase and will be 3-1/2" thick throughout the area**</p> <p>*Teal, Yellow, Purple, and Primary Red are considered premium colors. If any are used for more than 25% of the color mix, an additional materials charge will apply.</p> <p>*Any change in color, thickness, square footage or binder type will require a change order.</p> <p>Contractors bidding are responsible to verify that quoted material meets the project requirements.</p> <p>*Does not include sub-base materials. Acceptable sub-base materials include: Concrete, Asphalt, or Crushed Stone. More details available upon request.</p> <p>*It is the responsibility of the General Contractor to verify all colors and square footage prior to placing an order. Any revision to materials will require a revised quote and may result in a price increase.</p> <p>*Thicknesses quoted to meet industry standards for ASTM testing of 1000 HIC/200GMax.</p>	\$41,783.28	\$41,783.28
1.00	Install-Rubber Surfacing	Installation of 3325 square feet of poured-in-place rubber by a manufacturer certified installer at 3.5" thicknesses. Price does not include sub-base preparation, drainage, design work or inspections. Thicknesses installed to meet industry standards for ASTM testing of 1000 HIC/ 200GMax. *Installations over 2,000 sf will have seams in the finished surface.	\$18,653.25	\$18,653.25
1.00	Security	Security guard for poured-in-place surfacing during 8 hour curing time, under normal weather conditions. Temporary fencing (at an additional cost) may be needed in certain circumstances. *If you elect to decline a security guard, a security opt out waiver will be required.	\$673.00	\$673.00
1.00		Payment & Performance Bonds	\$7,569.16	\$7,569.16
1.00	Sourcewell	Sourcewell (formerly NJPA) Ross Discount, Contract # 030117-LS1	-\$4,373.25	-\$4,373.25
1.00	Discount	Sourcewell (formerly NJPA) LSI Discount, Contract # 030117-LS1	-\$2,623.96	-\$2,623.96

Amount	\$122,251.08
Tax Amount	\$11,308.22
Labor Total	\$116,923.57
Freight Amount	\$8,391.44
Total	\$259,874.31

## Notes to Customer

SIGNATURE BELOW ACCEPTING THIS PROPOSAL ☐  
 CONSTITUTE ☐ PURCHASE ORDER ONLY UPON APPROVAL ☐  
 LANDSCAPE STRUCTURES, INC. CUSTOMER RECEIPT OF ☐  
☐ ACKNOWLEDGEMENT CONSTITUTES SUCH  
 APPROVAL.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

☐ ☐ for the opportunity to quote your upcoming project. PLEASE NOTE: quote does ☐ include payment and performance bonds, ☐ engineering calculations, security, storage, permits, or inspection unless otherwise noted.

☐ ☐ may be required before order ☐ be placed depending on customer credit terms. Your purchase is subject to the terms and ☐ ☐ ☐ quote, approval of this quote ☐ to those terms.

If ordering materials after the expiration date, please add ☐ annually to materials for anticipated price increase. If this is for a BID, it is ☐ responsibility of the General Contractor bidding ☐ adjust their bid ☐ accommodate



## Landscape Structures Representative

Alex Hailey

[alexh@grossrec.com](mailto:alexh@grossrec.com)

anticipated price. Please also note sales tax will be based on the current at the time of shipping, not order date. Customer will be expected to cover these taxes.



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
12/18/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), THE REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  
Aon Risk Services Central, Inc.  
Minneapolis Office  
5600 West 83rd Street  
8200 Tower, Suite 1100  
Minneapolis MN 55437 USA

CONTACT NAME:  
PHONE (A/C No. Ed): (866) 283-7122 FAX (A/C No.): (800) 363-0105  
E-MAIL ADDRESS:

Landscapes Structures, Inc.  
601 7th Street South  
Delano MN 55328 USA

INSURER(S) AFFORDING COVERAGE	NAIC #
United States Fire Insurance Co.	21113
Market American Ins Co	28932
INSURER D:	
INSURER E:	
INSURER F:	

**COVERAGES**

CERTIFICATE NUMBER: 570085230319

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR	TYPE OF INSURANCE	ADDL	SUBR	POLICY NUMBER	POLICY EFF	POLICY EXP	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Ind. GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			MKLM6MMP1000177 GL & Products Liability SIR applies per policy terms & conditions	06/01/2020	06/01/2021	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) Excluded PERSONAL & ADX INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/PROP AGG \$4,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY Comp Ded \$100 <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY Dol don Ded \$500			133-747833-6	06/01/2020	06/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000			MKLM6MM70000209	06/01/2020	06/01/2021	EACH OCCURRENCE \$5,000,000 \$5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / OFFICER/OWNER EXCLUDED (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	4087392426	06/01/2020	06/01/2021	<input checked="" type="checkbox"/> PER STATUTE OTH EAL EACH ACCIDENT \$1,000,000 EAL DISEASE-EA EMPLOYEE \$1,000,000 EAL DISEASE-POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Skanska USA Building Project, City of Alameda, its City Council, boards, commissions, officials, employees, agents and volunteers are included as Additional Insured on General Liability and Automobile Liability policies. This certificate respects their interest in the operations of Landscapes Structures Inc. regarding Bayport Park Playground, Alameda, CA. A waiver of Subrogation is granted in favor of Certificate Holder in accordance with the policy provisions of the Workers' Compensation policy.

**CERTIFICATE HOLDER****CANCELLATION**

City of Alameda  
Attn: Risk Manager  
2226 Santa Clara Avenue  
Alameda CA 94501 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Aon Risk Services Central Inc*

Holder Identifier :

Certificate No : 570085230319

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Any owner, lessee or contractor whom you have agreed to include as an additional insured under a written contract or agreement, provided such was executed prior to an occurrence	Any locations for which a playground was installed by the named insured
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** ■ amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts ■ omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured ■ required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person ■ organization other than another contractor or subcontractor engaged ■ performing operations for a principal as ■ part of the same project.

**C.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Any owner, lessee or contractor whom you have agreed to include as an additional insured under a written contract or agreement, provided such was executed prior to an occurrence	Any locations for which a playground was installed by the named insured
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

#### **SCHEDULE**

- |   |  |
|---|--|
| 1. Broadened Insured Status   | 14. Audio, Visual, And Data Electronic Equipment                       |
| 2. Blanket Additional Insured When Required Under Written Contract  | 15. Loan/Lease Payoff Coverage   |
| 3. Employee Hired Autos Liability Coverage  | 16. Airbag Coverage  |
| 4. Employees As Insureds  | 17. Multiple Deductible Protection – Covered "Auto" And Trailer        |
| 5. Coverage Extensions – Supplementary Payments   | 18. Duties In The Event Of An Accident, Claim, Suit, Or Loss           |
| 6. Limited Fellow Employee Coverage   | 19. Non-Owned Auto Waiver Of Subrogation                               |
| 7. Limited Hired Auto - Physical Damage Coverage – Private Passenger (Includes Employee Hired Autos Physical Damage Coverage) | 20. Blanket Waiver Of Subrogation When Required Under Written Contract |
| 8. Custom Signs And Decoration  | 21. Coverage Territory – Short Term Hired Commercial "Autos"           |
| 9. Extended Towing Coverage   | 22. Limited Mexico Coverage  |
| 10. Glass Breakage  | 23. Unintentional Failure To Disclose Hazards                          |
| 11. Reimbursement For Increased Temporary Transportation Expense For Private Passenger And Commercial Vehicles                | 24. Mental Anguish Resulting From "Bodily Injury"                      |
| 12. Extra Expense – Stolen Vehicles   | 25. Waiver Of Sovereign Immunity                                       |
| 13. Personal Effects Coverage   | 26. Application Of This Endorsement                                    |



## 1. Broadened Insured Status

**SECTION II – COVERED AUTOS LIABILITY COVERAGE, Paragraph A. Coverage, Subparagraph 1. Who Is An Insured** is amended to include as an insured:

- A. Any subsidiary which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Form, while using with your permission a covered "auto."

However, the insurance afforded by this provision 1.A. does not apply to any subsidiary that is an insured under any other automobile liability policy, or would be an insured under such policy but for the termination of such policy or the exhaustion of such policy's limits of insurance.

- B. Any organization you newly acquire or form, and over which you maintain majority interest, while using with your permission a covered "auto".

The insurance afforded by this provision 1.B.:

1. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
2. Does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization.
3. Does not include any newly acquired or formed organization that is:
  - a. A joint venture or partnership; or
  - b. An insured under any other automobile liability policy, or would be an insured under such policy but for the termination of such policy or the exhaustion of such policy's limits of insurance.

## 2. Blanket Additional Insured When Required Under Written Contract

**Paragraph A.1. Who Is An Insured under SECTION II – COVERED AUTOS LIABILITY COVERAGE** is amended to add:

- d. Any person, organization or governmental entity with respect to the operation, maintenance, or use of a covered "auto" if you are required to add such person, organization or governmental entity to this policy as an additional "insured" in order to comply with the terms of ■ written contract or written agreement. This Additional Insured status is not conferred when such written contract or written agreement:

- (1) Involves the owner or anyone else from whom you hire or borrow a covered "auto" unless it is a "trailer" connected to a covered "auto" you own; or
- (2) Is executed after the date of "accident" or "loss";

Paragraph d.(2) above does not apply if:

- (a) the terms and conditions of the written contract or written agreement had been agreed upon prior to the "accident" or "loss"; and
- (b) you can definitively establish that the terms and conditions of the written contract or written agreement ultimately executed are the same as those which had been agreed upon prior to the "accident" or "loss".

**Paragraph ■ of Condition 5. Other Insurance of Part B. General Conditions under Section IV – Business Auto Conditions** is amended by the addition of the following:

Regardless of whether other insurance is maintained by ■ additional insured on a primary basis, the coverage provided by Provision 2. of the Commercial Auto Broad Form Endorsement will be primary to and noncontributing with other insurance maintained by the additional insured if the written contract or written agreement between

you and the additional insured specifically requires that this insurance be primary.

### **3. Employee Hired Autos Liability Coverage**

The following is added to the Who Is An Insured Provision of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a written contract or written agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

### **4. Employees As Insureds**

The following is added to the Section II – COVERED AUTOS LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured Provision:

Any "employee" of yours while using with your permission a covered "auto" you don't own, hire or borrow if such "auto" is being used in your business or your personal affairs.

### **5. Coverage Extensions - Supplementary Payments**

Paragraphs a.(2) and a.(4) under SECTION II – COVERED AUTOS LIABILITY COVERAGE, Paragraph 2.a. Supplementary Payments ■■ revised ■■ follows:

1. In a.(2), the limit for the cost of bail bonds is increased to \$5,000; and
2. In a.(4), the limit for the actual loss of earnings is increased to \$1,000 per day.

### **6. Limited Fellow Employee Coverage**

The following is added to Subparagraph 5. Fellow Employee under Paragraph B. Exclusions in SECTION II – COVERED AUTOS LIABILITY COVERAGE:

But this exclusion does not apply if:

- a. the "bodily injury" results from the use of a covered "auto" you own or hire, and
- b. you have Workers Compensation insurance in force covering all of your "employees."

Such coverage ■■ is afforded by this provision is excess over any other collectible insurance.

### **7. Limited Hired Auto - Physical Damage Coverage - Private Passenger (Includes Employee Hired Autos Physical Damage Coverage)**

The following is added to Subparagraph 1. under Paragraph A. Coverage under SECTION III – PHYSICAL DAMAGE COVERAGE:

#### **d. Limited Hired Auto – Physical Damage – Private Passenger**

If hired "autos" ■■ covered "autos" for Covered Autos Liability Coverage, and if Physical Damage Coverage of Comprehensive or Collision is provided under this Coverage Form for any "auto" you own, then Comprehensive and Collision Physical Damage Coverages as provided under SECTION III – PHYSICAL DAMAGE COVERAGE of this Coverage Part are extended to "autos" of the private passenger type you or your employee hires under a written contract or written agreement without a driver, ■■ your direction, for the purpose of conducting your business, subject to the following:

- (1) The most we will pay for "loss" to any hired "auto" is \$35,000 or the actual cash value or cost to repair or replace, whichever is the least, minus a deductible.

- (2) The deductible will be equal to the largest deductible applicable to any owned "auto" of the private passenger type for that coverage, or \$1,000, whichever is less.
- (3) Limited Hired Auto – Physical Damage – Private Passenger coverage ■ excess over any other collectible insurance.
- (4) Subject to the above limit, deductible, and excess provisions we will provide coverage equal to the broadest coverage applicable to any covered "auto" you ■ of the private passenger type insured under this policy.

Coverage includes loss of use of that hired auto, provided it results from an "accident" for which you are legally liable and as a result of which a monetary loss is sustained by the leasing or rental concern. The most we will pay for any ■ "accident" is \$20 per day subject to a maximum of \$1,000.

If a limit for Hired Auto – Physical Damage is shown in the Schedule, then that limit replaces, and is not added to, the \$35,000 limit indicated above.

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

## **8. Custom Signs And Decoration**

The following is added to Paragraph A. Coverage 1. under SECTION III – PHYSICAL DAMAGE COVERAGE:

In the event of a total loss to ■ "auto" insured for auto physical damage coverage ■ this policy, in addition to the actual cash value of the "auto", we will pay the actual cost to repair or replace signage or custom paint details up to \$5,000.

## **9. Extended Towing Coverage**

If the named insured carries Comprehensive and Collision Coverage for the damaged covered commercial "auto", then this coverage extension 9. applies to that covered "auto." If the damaged covered "auto" is of the private passenger type, then in addition to Comprehensive and Collision Coverage, the damaged covered "auto" must also carry Towing Coverage in order for this coverage extension 9. to apply.

The following is added to Paragraph A.2. Towing under SECTION III – PHYSICAL DAMAGE COVERAGE:

We will pay for towing and associated labor costs each time a covered "auto" is disabled. All labor must be performed at the place of disablement. If the "auto" is of the private passenger type, there will be no deductible. If the "auto" is not a private passenger type, a \$250 deductible will apply to this coverage but it will not reduce the available limit of insurance. For all types of "autos", the most we will pay under this coverage is \$1,000 per disablement. "Autos" which are disabled do not include stolen vehicles.

## **10. Glass Breakage**

If you carry Comprehensive Coverage for the damaged covered "auto", then this coverage extension applies to that covered "auto":

The following is added to Paragraph A.3. Glass Breakage - Hitting A Bird Or Animal – Falling Objects Or Missiles under SECTION III – PHYSICAL DAMAGE COVERAGE:

Any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced. If the glass must be replaced and there is no other damage associated with the "loss", the deductible will be \$100 unless

a lower deductible is shown ■ the declarations page for this coverage.

## **11. Reimbursement For Increased Temporary Transportation Expense For Private Passenger And Commercial Vehicles**

### **A. If The Covered "Auto" Has Comprehensive Or Specified Causes Of Loss Physical Damage Coverage:**

Paragraph a. Transportation Expenses under SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions is replaced by the following:

If your covered "auto" is damaged or stolen and the damage or theft is covered by Comprehensive or Specified Causes of Loss coverage provided by this policy, we will pay up to \$50 per day subject to ■ maximum limit of \$1,500 for the necessary and actual temporary transportation expenses (including rental reimbursement) incurred by you during the period beginning 24 hours after the theft or damage and ending, regardless of the policy's expiration,

- . when the covered "auto" is returned to use or we pay for its "loss" in the event of ■ total theft of the covered "auto", or
- b. when the covered "auto" is repaired or replaced, or we pay for its "loss", whichever is earlier in the event of a "loss" due to a cause other than the total theft of the covered "auto."

Except with respect to losses pertaining to the total theft of covered "autos" of the private passenger type, this coverage does not apply while there are spare or reserve "autos" available to you.

No deductible applies to this coverage.

### **B. If The Covered "Auto" Has Collision Physical Damage Coverage:**

If your covered "auto" is damaged and the damage is covered by Collision coverage provided by this policy, we will pay up to \$50 per day subject to ■ maximum limit of \$1,500 for necessary and actual temporary transportation expenses (including rental reimbursement) incurred by you during the period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, when the covered "auto" is repaired or replaced, or we pay for its "loss", whichever is earlier.

This coverage does not apply while there ■ spare or reserve "autos" available to you.

No deductible applies to this coverage.

## **12. Extra Expense - Stolen Vehicles**

The following is added under Paragraph A.4.a. Coverage Extensions of SECTION III - PHYSICAL DAMAGE COVERAGE:

We will pay for all reasonable and necessary expenses to return a stolen covered "auto" to the named insured ■ such covered "auto" carries Comprehensive coverage.

### **13. Personal Effects Coverage**

Paragraph A. Coverage under SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following coverage:

#### **Personal Effects Coverage**

1. We will pay for "loss" to personal property or effects which are owned by an insured and in or on your covered "auto" at the time of "loss" in the event of ■ total theft of that covered "auto."
2. Subject to Paragraph C. Limit Of Insurance under SECTION III – PHYSICAL DAMAGE COVERAGE, we will pay up to \$500 for "loss" of personal property or effects in any one "accident" involving total theft of ■ covered "auto".

This insurance will not apply if, at the time of "loss", the covered "auto" is unattended, unless the "loss" is the result of forced entry into the covered "auto" while all doors, windows or other openings are closed and locked and there is evidence of forced entry.

Under this extension, ■ will not pay for "loss" to the following: accounts, bills, currency, deeds, evidences of debt, money, notes or securities; electronic equipment or tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment; jewelry, watches, necklaces, bracelets, gems, gold, platinum, silver, furs; animals, birds, or fish or any motorized vehicle.

This coverage will be excess over any other collectable insurance. No deductible applies to this coverage.

### **14. Audio, Visual, And Data Electronic Equipment**

The sub-limit in Paragraph C.2. of the Limit of Insurance Provision of SECTION III- PHYSICAL DAMAGE COVERAGE is increased to \$1,500.

### **15. Loan/Lease Payoff Coverage**

The following is added to Limit of Insurance of SECTION III - PHYSICAL DAMAGE COVERAGE:

In the event of a total "loss" to a covered "auto" shown in the schedule or declarations for which Collision and Comprehensive Coverage apply, ■ will pay any unpaid amount due ■ the lease or loan for that covered "auto," less;

1. The amount paid under the Physical Damage Coverage Section of the policy, and
2. Any;
  - a. Overdue lease/loan payments at the time of the "loss";
  - b. Financial penalties imposed under a lease for excessive use, abnormal ■■■■ and tear or high mileage;
  - c. Security deposits not returned by the lessor;
  - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
  - e. Carry-over balances from previous loans or leases.

This coverage is limited to a maximum of \$1,500 for each covered "auto".

#### **16. Airbag Coverage**

If the named "insured" carries Comprehensive and Collision Coverage for the damaged covered "auto", then this coverage extension 16. applies to that covered "auto".

The following is added to Subparagraph 3.a. under Paragraph B. Exclusions in SECTION III - PHYSICAL DAMAGE COVERAGE:

The accidental discharge of an airbag shall not be considered mechanical or electrical breakdown and therefore shall not be excluded. This provision does not apply to "autos" you hire with a driver and it is in excess over any warranty specifically designed to provide this coverage.

#### **17. Multiple Deductible Protection – Covered "Auto" And Trailer**

If you carry Comprehensive and Collision coverages for the damaged covered "autos", then this coverage extension 17. applies to those covered "autos":

The following is added to Paragraph D. Deductible under SECTION III - PHYSICAL DAMAGE COVERAGE:

Whenever a covered "auto" and trailer are each damaged in the same "loss" while operating as a combined truck and trailer unit, only one deductible shall apply to the "accident". The larger of the two deductibles shall apply.

If another policy or coverage form issued by us, that is not an automobile policy or coverage form, applies to the same "loss" or "accident", the following applies:

1. If the deductible under this Business Auto Coverage Form is not the largest deductible, it will be waived.
2. If the deductible under this Business Auto Coverage Form is the largest deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

#### **18. Duties In The Event Of An Accident, Claim, Suit, Or Loss**

A. Subparagraph 2.a. under Paragraph A. Loss Conditions in SECTION IV – BUSINESS AUTO CONDITIONS is amended so that your obligations relative to notification requirements apply only when the "accident" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. A member, if you are a joint venture;
4. An executive officer, insurance manager or any other person designated by you to send notices of "accidents" or "loss" to insurers, if you are a corporation; or
5. A member, if you are a limited liability company.

B. Subparagraph 2.b.(2) under Paragraph A. Loss Conditions in SECTION IV – BUSINESS AUTO CONDITIONS is amended so that your obligations relative to providing us with documents concerning a claim or "suit" will not be considered breached unless the breach occurs after such claim or "suit" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. A member, if you are a joint venture;
4. An executive officer, insurance manager or any other person designated by you to send notices of claims or "suits" to insurers, if you are a corporation; or



5. A member, if you are a limited liability company.

#### **19. Non-Owned Auto Waiver Of Subrogation**

The following is added to Subparagraph 5. Transfer Of Rights Of Recovery Against Others To Us, under Paragraph A. Loss Conditions in SECTION IV – BUSINESS AUTO CONDITIONS:

We hereby waive any right of subrogation against any of your officers, directors, or "employees" which might arise by reason of any payment under the insurance afforded by this policy for the operation, maintenance, use, loading, or unloading of non-owned "autos".

This waiver extends only to payments in excess of other valid and collectible insurance available to the officer, director, or "employee".

#### **20. Blanket Waiver Of Subrogation When Required Under Written Contract**

The following is added to Subparagraph 5. Transfer Of Rights Of Recovery Against Others To Us, under Paragraph A. Loss Conditions in SECTION IV - BUSINESS AUTO CONDITIONS:

However, we waive any right of recovery we may have against a person, organization or governmental entity when you have waived such right of recovery under a written contract or written agreement provided such written contract or agreement is:

1. currently in effect or becoming effective during the term of this policy; and
2. executed prior to the "accident" or "loss"; or
3. executed after the "accident" or "loss" if:
  - a. the terms and conditions of the written contract or written agreement had been agreed upon prior to the "accident" or "loss"; and
  - b. you can definitively establish that the terms and conditions of the written contract or written agreement ultimately executed are the same as those which had been agreed upon prior to the "accident" or "loss".

#### **21. Coverage Territory - Short Term Hired Commercial "Autos"**

Paragraph 7. Policy Period, Coverage Territory under Paragraph B. General Conditions in SECTION IV – BUSINESS AUTO CONDITIONS is amended by the addition of the following:

The coverage territory is extended to anywhere in the world if:

1. A covered "auto" of the commercial van, pick-up, or truck type is leased, hired, rented or borrowed for a period of 30 days or less; and
2. The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We will also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

## **22. Limited Mexico Coverage**

### **WARNING**

AUTO ACCIDENTS IN MEXICO ARE SUBJECT TO THE LAWS OF MEXICO ONLY - **NOT** THE LAWS OF THE UNITED STATES OF AMERICA. THE REPUBLIC OF MEXICO CONSIDERS ANY AUTO ACCIDENT A **CRIMINAL OFFENSE** AS WELL AS A CIVIL MATTER.

IN SOME CASES THE COVERAGE PROVIDED UNDER **THIS ENDORSEMENT MAY NOT BE RECOGNIZED BY THE MEXICAN AUTHORITIES** AND WE MAY NOT BE ALLOWED TO IMPLEMENT THIS COVERAGE AT ALL IN MEXICO. YOU SHOULD CONSIDER PURCHASING AUTO COVERAGE FROM A LICENSED MEXICAN INSURANCE COMPANY BEFORE DRIVING INTO MEXICO.

THIS ENDORSEMENT DOES **NOT** APPLY TO ACCIDENTS OR LOSSES WHICH OCCUR OUTSIDE OF 25 MILES FROM THE BOUNDARY OF THE UNITED STATES OF AMERICA.

### **A. Coverage**

1. Paragraph 7. Policy Period, Coverage Territory of the General Conditions is amended by the addition of the following:

The coverage territory is extended to include Mexico but only for:

- a. "Accidents" or "losses" occurring within 25 miles of the United States border; and
  - b. Trips into Mexico of 10 days or less.
2. Condition 5. Other Insurance of Part B. General Conditions under Section IV - Business Auto Conditions is replaced by the following:

The insurance provided by this Provision 22 will be excess over any other collectible insurance.

### **B. Physical Damage Coverage is amended by the addition of the following:**

If a "loss" to a covered "auto" occurs in Mexico, we will pay for such "loss" in the United States. If the covered "auto" must be repaired in Mexico in order to be driven, we will not pay more than the actual cash value of such "loss" at the nearest United States point where the repairs can be made.

### **C. Additional Exclusions**

The following additional exclusions are added:

This insurance does not apply:

1. If the covered "auto" is not principally garaged and principally used in the United States.
2. To any "insured" who is not a resident of the United States.

## **23. Unintentional Failure To Disclose Hazards**

The following is added to Paragraph B. General Conditions in SECTION IV – BUSINESS AUTO CONDITIONS:

If you unintentionally fail to disclose any hazards existing on the effective date of this policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium due to us as a result of these undisclosed hazards in accordance with our filed rating plans.

## **24. Mental Anguish Resulting From "Bodily Injury"**

The definition of "bodily injury" in SECTION V - DEFINITIONS is replaced by the following:

"Bodily injury" means physical injury, physical sickness or physical disease sustained by any person, including "mental anguish" or death resulting from any of these. It does not include mental anguish to any person which occurs in the absence of physical injury, physical sickness or physical disease to that person.

For the purpose of this provision, the term "mental anguish" shall mean any type of mental or emotional illness or distress.

## **25. Waiver Of Sovereign Immunity**

The following provision applies if you are a "governmental entity" or we have added a "governmental entity" to your policy as an additional insured, and the "governmental entity" requires us to obtain permission prior to asserting a defense involving governmental immunity or the jurisdiction of the tribunal over the "governmental entity":

We shall not raise any defense involving, in any way, the jurisdiction of the tribunal over the "governmental entity", the immunity of the "governmental entity" or its commissioners, officers, agents or employees, the governmental nature of such entity, or the provisions of any statutes respecting suits against the "governmental entity" without first obtaining express advance permission from the designated representative of the "governmental entity."

Application of this provision shall not subject us to liability for any portion of a claim or judgment in excess of the applicable limit of insurance.

For the purposes of this provision, "governmental entity" means a state, county, district, municipality, town, township, borough, parish, village, or other political subdivision or governmental agency or subdivision.

## **26. Application Of This Endorsement**

The coverage enhancements provided by this endorsement apply to the Business Auto Coverage Form. If your policy includes other endorsements in addition to this Commercial Automobile Broad Form Endorsement, and there is a conflict between any of the terms of such endorsement(s) and this Commercial Automobile Broad Form Endorsement, the terms of the other endorsement(s) shall be given priority and control over the terms set forth in this Commercial Automobile Broad Form Endorsement, even if the terms of such other endorsement(s) have the effect of limiting, excluding or reducing the coverage provided under this Commercial Automobile Broad Form Endorsement.

All other terms and conditions remain unchanged.

POLICY NUMBER: 4087392426

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT -  
CALIFORNIA**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be \_\_\_\_\_ % of the California workers' compensation premium otherwise due on such remuneration.

**SCHEDULE****PERSON OR ORGANIZATION**

ANY PERSON OR ORGANIZATION WITH  
WHOM OR WITH WHICH YOU HAVE AGREED  
IN A WRITTEN CONTRACT TO WAIVE YOUR  
RIGHT OF RECOVERY AGAINST, PROVIDED  
SUCH WRITTEN CONTRACT:

**JOB DESCRIPTION**

SEE WORDING UNDER PERSON OR  
ORGANIZATION

1. IS CURRENTLY IN EFFECT OR WILL  
BECOME EFFECTIVE DURING THE TERM OF  
THIS POLICY; AND
2. WAS EXECUTED AND BECAME  
EFFECTIVE PRIOR TO THE OCCURRENCE  
OF THE INJURY COVERED BY THIS  
POLICY.

THIS FORM ONLY APPLIES IN CA.

DATE OF ISSUE: 06-10-20

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